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LAW OF THE SEA

Letter dated 13 November 1995 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General

I have the honour to submit the text of a document related to the issue of transit and navigation in the Black Sea Straits (see annex).

I should be grateful if you would have this letter and its annex circulated as a document of the General Assembly under agenda item 39.

(Signed) S. LAVROV

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Annex

[Original: Russian]

Navigation in the Black Sea Straits

Ensuring the safety of navigation in the Black Sea Straits is becoming, in the current circumstances, a matter of increasing urgency, since it is a major condition for avoiding accidents and incidents involving ships and preventing the related threat of pollution or other damage to the Straits and the adjacent coastal areas.

In this regard, we can only welcome the improvements in the organization and technical capacity of the Turkish coastal services and the adoption of rules that would help ensure such safety and facilitate international navigation through the Straits.

At the same time, the Maritime Traffic Regulations for the Turkish Straits and the Marmara Region, which were adopted by the Turkish Government and entered into force on 1 July 1994, go beyond the solution of technical problems related to ensuring safe navigation and do not conform to the provisions of the Convention regarding the regime of the Straits, adopted in Montreux in 1936, and other universally recognized norms of maritime law.

A number of articles of the Regulations provide for the introduction of procedures regulating passage through the Straits and of substantial restrictions, including the complete prohibition of such passage, for certain categories of vessels depending on their length, draught, cargo and so forth. Maritime traffic in the Straits may even be halted without sufficiently valid reasons. In some cases, the use of paid services, such as towing, has been made obligatory. The Regulations require vessels to provide information that is not stipulated in the Montreux Convention. The wording relating to transit is ambiguous, which gives room for arbitrary interpretation and the application of measures with respect to a vessel in transit through the Straits that should not be applied to it.

Irrespective of the various ways in which they may be interpreted, the Regulations, in accordance with articles 1 and 2 (d), are applicable to military vessels, in spite of the fact that customs and health inspections, penalties and other similar measures are incompatible with the international legal status of military vessels, which possess immunity.

At the same time, the Montreux Convention provides that "merchant vessels shall enjoy complete freedom of transit and navigation through the Straits, by day and by night, under any flag and with any kind of cargo, without any formalities", except for the sanitary control of merchant vessels entering the Straits and payment for optional services, such as pilotage and towage, rendered at the request of the agent or master of any such vessel.

In the light of the foregoing, one can only conclude that the basic provisions of the Montreux Convention have not been duly reflected in the

Regulations in spite of the fact that all Parties to the Convention, including Turkey, assumed the obligation to exercise the principle of freedom of transit and navigation by sea in the Straits in accordance with the provisions of the Convention (art. 1). Further, no account has been taken of the universally recognized norms of ordinary maritime law, which do not permit the creation of obstacles or the halting of transit through straits used by international shipping.

The above-mentioned position has been supported by such a competent intergovernmental organization as the International Maritime Organization (IMO). In May 1994, the IMO Maritime Safety Committee considered draft international rules on navigation in the Straits submitted by the Turkish side and in many respects repeating the Regulations. The Committee rejected the Turkish proposals, which sought to establish Turkish control over navigation in the Straits, and adopted the rules and recommendations based on the strict observance of the principle of the freedom of navigation through this international waterway. In particular, the Committee stressed that Turkey's national norms should conform fully with the rules and recommendations, which will enter into force in November 1995. In October 1994, the IMO Legal Committee reaffirmed this appeal to Turkey.

The document of the Black Sea Economic Cooperation Working Group on Transport, adopted in June 1994 in Istanbul, also provides that documents adopted by a littoral State should respect the special regime of the Straits established by the Montreux Convention and should be in full conformity with IMO decisions.

One might have expected that Turkey would take steps to implement the IMO decisions. Unfortunately, in the year and a half that has elapsed since May 1994, Turkey has not deemed it necessary to do this. Turkey has also not responded to proposals to settle disputes through bilateral consultations. Instead, Turkish representatives limit themselves to the groundless assertion that, since the issuance in November 1994 of the instruction on the application of the Regulations, there are no longer any discrepancies between the Regulations and the IMO rules. However, although the instruction is more flexible, it is, unlike the Regulations, an administrative - and not a legislative - document, and not only can it not rescind the Regulations but it can itself at any time be made tougher or rescinded by a simple order of an administrative official.

In practice, Turkey's attempt to amend, on a unilateral basis, the regime of navigation in the Straits has already resulted in considerable economic loss as a consequence of the unjustified detention of vessels prior to their entry into the Straits, first and foremost for countries of the Black Sea littoral. As regards the Russian Federation, between 1 July 1994 and 30 September 1995, there have been 249 cases of detention of Russian vessels, which led to the loss of 1492 hours of operating time and the direct loss of more than $670,000, not considering lost profit, lost contracts and lateness penalties.

Turkey's attempt to introduce unilaterally its own rules for transit through the Straits can create an extremely dangerous precedent for international shipping in other geographical regions.

The United Nations General Assembly, as the body that coordinates and monitors the use of the world's oceans and seas in accordance with the provisions of the United Nations Convention on the Law of the Sea, should not disregard acts that contradict universally recognized principles and norms of international law. Strict adherence to the principle of the conscientious implementation of international obligations will, undoubtedly, help bring about an improvement in the situation regarding the Black Sea Straits and will speed up efforts to find a constructive solution to the problem of ensuring the safety of navigation in the Straits.